UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

PEDRO ENRIQUE ZAYAS RODRIGUEZ, Petitioner, v. **JUAN BALTASAR**, Warden, Aurora ICE Processing Center; **TODD LYONS,** Acting Director of U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; and **PAM BONDI,** Attorney General of the United States, in their official capacities, Respondents.	**Case No. 26-cv-686** **MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

INTRODUCTION

1. Petitioner Pedro Enrique Zayas Rodriguez ("Petitioner" or "Mr. Zayas") is currently detained and in the custody of Immigration and Customs Enforcement (ICE) at the Aurora ICE Processing Center (AIPC), operated by GEO Group, Inc.
2. His continued detention violates the Constitution and laws and regulations of the United States for the reasons set forth in the accompanying Petition challenging his detention at the AIPC.
3. Absent immediate intervention, Petitioner faces transfer that would frustrate habeas jurisdiction and/or prolonged unlawful detention and/or imminent removal.

4. A temporary restraining order or preliminary injunction is necessary to preserve the status quo and ensure meaningful judicial review.

FACTUAL BACKGROUND

5. Mr. Zayas is a 36-year-old citizen of Cuba.
6. Mr. Zayas came to the United States on or about September 22, 2004, at the age of 14 and was "processed for I-551" and given a lawful admission until September 22, 2004. *See* Exhibit 1.
7. Upon information and belief, Mr. Zayas subsequently adjusted states to that of a lawful permanent resident ("LPR") through the Cuban Adjustment Act ("CAA").
8. Mr. Zayas was subsequently ordered removed by an immigration judge on February 21, 2014.
9. Approximately four months after Mr. Zayas was ordered removed, he was released on an Order of Supervision ("OSUP") on June 16, 2014. *See* Exhibit 2.
10. On February 2, 2026, Mr. Zayas was arrested by the Archuleta County Sheriff's Office for the charge "Habitual Traffic Offender, Driving after Revocation," a misdemeanor offense. Mr. Zayas posted a bond for release.
11. The Archuleta County Sheriff's Office held Mr. Zayas on a "parole hold" until his parole officer authorized his release; Mr. Zayas was released from the custody of the Archuleta County Sheriff's Office on February 2, 2026.
12. On February 2, 2026, Petitioner was re-detained by ICE in the parking lot of the Archuleta County Sheriff's Office.
13. Mr. Zayas was given no information or documentation regarding the justification for the revocation of his OSUP on February 2, 2026.

14. ICE officers repeatedly requested Mr. Zayas sign a document that states he agrees to be removed to Mexico; Mr. Zayas has declined.

15. On February 11, 2026, recently after being retained by Mr. Zayas, undersigned counsel received a phone call from a United States ("U.S.") Citizenship and Immigration Services ("CIS") asylum officer stating that Mr. Zayas was scheduled for a credible fear interview regarding his removal to Mexico ("CIS Phone Call #1").

16. On February 11, 2026, undersigned counsel asked why Mr. Zayas was being given a credible fear interview for Mexico because his home country is Cuba. The officer stated that ICE designated Mexico as the country for removal. When undersigned counsel cited the process and procedure described in 8 U.S.C. 1231(b)(2)(E)(vii) if ICE wants to remove the Petitioner to a third country, the officer stated she was writing undersigned counsel's request for the next officer in his file. The officer then terminated the phone call because CIS wanted a different G-28 than is used by ICE Enforcement and Removal Operations ("ERO") before they would allow undersigned counsel to participate in the interview, and Petitioner refused to complete the interview without his attorney present on the call.

17. On February 13, 2026, CIS again attempted to interview with Mr. Zayas ("CIS Phone Call #2"), this time the CIS asylum officer stated that she was conducting a screening for a third country removal. Again, undersigned counsel stated that pursuant to 8 U.S.C. 1231(b)(2)(E)(vii), the government of the third country must "accept the alien into that country" and neither Petitioner nor his attorney had received any documentation or notification that Mexico had, in fact, agreed to accept the Petitioner, and, as such, any third country screening was premature. The officer then terminated CIS Phone Call #2 because

undersigned counsel had provided a G-28 that did not have the Petitioner's "wet signature," Petitioner refused to complete the interview without his attorney present on the call.[1]

18. On February 19, 2026, USCIS again attempted an interview with Mr. Zayas ("CIS Phone Call #3"). USCIS Asylum Officer Asfaw conducted CIS Phone Call #3 and immediately began asking Mr. Zayas questions to confirm his identity. Again, undersigned counsel requested an explanation for the interview. Asylum Officer Asfaw stated Mr. Zayas was being screened for a third country removal to Mexico. Undersigned counsel again asked for any information or documentation that Mexico had agreed to accept Mr. Zayas as required under 8 U.S.C. 1231(b)(2)(E)(vii). This time, Officer Asfaw stated that undersigned counsel needed to ask ICE because the only information that Officer Asfaw had was that Petitioner was to receive a third country screening for Mexico. Undersigned counsel asked who specifically she should contact at ICE, and Officer Asfaw responded that Petitioner's Deportation Officer should be contacted. Undersigned counsel asked for the Deportation Officer's name; however, Officer Asfaw did not provide a specific name, instead Officer Asfaw instructed undersigned counsel to contact ICE generally.

19. Undersigned counsel advised Mr. Zayas that before we knew how or why he was being asked to complete an interview for removal to Mexico, he should not answer any questions. Officer Asfaw continued asking questions despite undersigned counsel and Petitioner stating they would not continue with the interview. Officer Asfaw continued asking questions, to which there was no response on the phone call, until she was informed by a Geo guard that Mr. Zayas was no longer in the room.

[1] Due to restrictions and time constraints, undersigned counsel was unable to acquire a "wet signature" from Petitioner before the February 13, 2026, phone call.

20. After CIS Phone Call #3, undersigned counsel contacted ICE and OPLA per the CIS officer's request. *See* Exh. 3.

21. Respondents' initial and repeated refusal to follow the law and procedures governing revocation of OSUP violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

LEGAL STANDARD

22. To obtain temporary and preliminary injunctive relief, Petitioner must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003).

23. When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

24. Section 1231 governs the arrest and detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231. Section 1231 directs the Attorney General of the United States to effect removal within 90 days and authorizes detention during this removal period. *See* 8 U.S.C. § 1231(a)(1)-(2). After that time passes, if removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute and the noncitizen must be released. *Zadvydas v. Davis*, 533 U.S. 678, 699-700, *see* 28 U.S.C. § 1231(a)(3) ("If the alien does not leave or is not removed within the [90-day] removal period, the alien, pending

removal, shall be subject to supervision under regulations prescribed by the Attorney General.).

25. Regulations promulgated in the Code of Federal Regulations ("CFR") govern revocation of release concerning noncitizens who are subject to a final order of removal. *See* 8 C.F.R. § 241.4; 8 C.F.R. § 241.13. The regulations state that upon revocation of release, the noncitizen "will be notified of the reasons for revocation of his or her release," and will be given "an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *See* 8 C.R.F. § 241.4(l)(1); § 241.13(i)(3).

26. An order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); see also *id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute [,]" courts question whether these regulations are ultra vires of statutory authority. See, e.g., *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

27. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area."

Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

28. It is well settled that infringement of a constitutional right enough and require no further showing of irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976), *Nken v. Holder*, 556 U.S. 418, 435 (2009), *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019).

29. The conditions at the AIPC causes detention to be virtually the same as incarceration. "The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972).

30. Incarceration also contributes to and/or causes harm to a person's emotional, psychological and physical state of being. The Tenth Circuit has noted that when someone is [detained] "potentially irreparable harm every day [one] remains in custody." Rodriguez Vazquez, 779 F.Supp.3d at 1262. This injury is "certain, great, actual, and not theoretical." *Heideman v. S. Salt Lake City, Utah*, 348 F.3d 1182, 1189 (10th Cir. 2003) (citations omitted).

ARGUMENT

Petitioner Is Likely to Succeed on the Merits

31. Petitioner does not dispute or contest the Department's authority to re-detain noncitizens who were previously released pursuant to an order of supervision. Rather, the Petitioner asserts that the Department's authority to re-detain noncitizens who were previously released pursuant to an order of supervision is restricted by 8 C.F.R. § 241.13.

32. Petitioner challenges his detention as unlawful based on ICE's decision to revoke his release without providing the required notice and opportunity to be heard which are required by the Due Process Clause.

33. ICE failed to comply with its own governing regulations contained in 8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3) when ICE failed to (1) provide him with notice that his Order of Supervision was revoked; (2) conduct an informal interview or afford Petitioner an opportunity to be heard; and (3) sufficiently demonstrate the changed circumstances that render his removal significantly likely in the reasonably foreseeable future.

34. Both the Petitioner and his counsel have requested notice of the reasons for Petitioner's re-detention. In response, the U.S. Citizenship and Immigration Service ("CIS") instructed undersigned counsel to contact ICE, and ICE, through its counsel at the Office of Principal Legal Advisor ("OPLA") instructed undersigned counsel to contact CIS. *See* Exhibit 3. Thus, the Petitioner can only presume that no such notice exists. Because the Petitioner has not been provided with any such notice of a revocation of his supervision, the Petitioner is unable to respond to any such revocation, nor has Petitioner been heard when both he and his attorney have repeatedly requested such notice from CIS (throughout the interview process) or from OPLA when written request was sent to ICE after the February 19, 2026 interview.

Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Injunctive Relief.

35. Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

36. Every day Petitioner is detained; his Constitutional rights are violated. This harm, particularly the violation of Petitioner's right to due process, qualifies as irreparable harm. Because Petitioner's rights to due process were violated when he was initially detained in 2026, the Petitioner has a heightened fear of future violations that may lead to his deportation to Mexico, a country he fears.

37. Petitioner is currently enduring emotional, psychological and physical harm from his continued detention. This harm is magnified by ICE's continuous harassment to convince Petitioner to voluntarily agree to a deportation to Mexico. Petitioner is afraid every day that he will be suddenly, unexpectedly taken by ICE and deported to another ICE facility away from his family or to Mexico. Petitioner has participated in three phone calls with CIS during which time CIS repeatedly argued that Petitioner is subject to removal to Mexico, despite the Petitioner and undersigned counsel clearly articulating, in English, that neither ICE nor CIS has provided any indication that Mexico has agreed to receive the Petitioner and guarantee his safety. Because these CIS phone calls continue, despite each officer stating they are recording undersigned counsel's request for such documentation and no officer appearing to

know or understand such requests, the Petitioner's emotional distress has reached an all-time high. This is causing irreparable harm.

The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

38. The final two factors for injunctive relief, balance of hardships and public interest, "merge when the Government is the opposing party." *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976), *Nken v. Holder*, 556 U.S. 418, 435 (2009).
39. The Tenth Circuit has held that no further showing of irreparable injury is required when the harm alleged is violation of the Petitioner's Constitutional rights because the relief available would not adequately compensate him for the alleged violations. *See Kikumura v. Hurley*, (242 F.3d 950 (10th Cir. 2001), *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003).
40. Petitioner is suffering irreparable harm while detained. While detained, Petitioner is enduring emotional hardship as well as economic hardship. Petitioner is detained in jail-like conditions at the AIPC.
41. Respondents, by contrast, face minimal hardship. The Respondents would merely incur administrative costs associated with providing procedural due process to which Respondent has a Constitutional right.
42. Moreover, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v.*

Holder, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

43. Finally, the Tenth Circuit held that it is "always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriax,* 670 F.3d. 1111, 1132 (10th Cir. 2012), *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1147 (10th Cir. 2013),.*Colorado v. DeJoy*, 487 F.Supp.3d. 1061.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant preliminary injunctive relief, enjoining Respondents from removing from transferring Petitioner outside the District of Colorado during the pendency of these proceedings, order Petitioner's immediate release under reasonable conditions.

Respectfully submitted,

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Dated: 19th day of February 2026

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[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION

This matter having come before the Court on Petitioner's Motion for a Preliminary Injunction [Dkt. #___], and this Court having reviewed the pleadings and heard arguments from counsel, the Court hereby GRANTS petitioner's Motion for a Preliminary Injunction.

Petitioner has satisfied the requirements for preliminary injunctive relief. In particular, Petitioner has demonstrated that he is substantially likely to succeed in proving that prolonged detention without a bond hearing under 8 U.S.C. § 1225(b) is unconstitutional. Petitioner has also demonstrated that, without relief, he would suffer irreparable harm to his constitutional rights and physical and psychological health.

Accordingly, Respondents are ordered to immediately release petitioner from detention, or, in the alternative, provide petitioner a bond hearing before an Immigration Judge where the Department of Homeland Security bears the burden of establishing the necessity of petitioner's continued detention and considers alternatives to detention that could mitigate flight risk.

SO ORDERED, this ____ day of _____, 2026.

_____

Hon. _____, U.S.D.J.